**HIGH COURT OF JUDICATURE AT BILASPUR : CHHATTISGARH**

**CORAM :** Hon'ble Shri H.L.Dattu, Chief Justice &
Hon'ble Shri V.K.Shrivastava, Judge

**Writ Petition No.5067 of 2004**

**ORDER FOR CONSIDERATION**

Sd/-
Chief Justice

**HON'BLE SHRI V.K. SHRIVASTAVA, J.**

Sd/-
V.K. Shrivastava
Judge
/03/2007

**POST FOR PRONOUNCEMENT**
**OF THE ORDER :** 13 /03/2007

Sd/-
Chief Justice

**HIGH COURT OF JUDICATURE AT BILASPUR: CHHATTISGARH**

**DIVISION BENCH**

---

**CORAM:** **HON'BLE SHRI H.L. DATTU, C.J.**
**& HON'BLE SHRI V.K. SHRIVASTAVA, J.**

---

**Writ Petition No.5067 of 2004**

**PETITIONERS / RESPONDENTS**

1. Union of India, Through Its Secretary, Ministry of Railways, Railway Board, New Delhi.
2. The General Manager, South Eastern Railway, Garden Reach, Kolkata.
3. The Divisional Railway Manager, South Eastern Railway, Bilaspur.

**VERSUS**

**RESPONDENT APPLICANT**

Ramesh Kumar Bhagoria,
S/o Late Ramdayal, aged about 65 years, R/o 14/159, State Bank Colony, Bindra Nagar, Lane No. R/B, Bilaspur – 495004.

---

Present: Shri P.S.Koshy, counsel for the petitioners.
Shri Manindra Shrivastava, Senior Advocate with Shri Ram Kumar Tiwari, counsel for the respondent.

---

**O R D E R**

**(Passed on 13th March, 2007)**

The following order of the Court was passed by

**H.L. Dattu, C.J. :**

This writ petition is directed against the order passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur ("the Tribunal" for short) in O.A.No.385 of 2001, dated 29-09-2004. By the impugned order, the Tribunal has allowed the application filed by the respondent and quashed the order passed by the petitioners –

authorities dated 19-03-1999 and has further declared that the respondent is entitled to all consequential benefits.

2. The facts in brief are :

The respondent in this petition was the applicant before the Tribunal. He was an officer/employee of South Eastern Railway ("Railways" for short). Initially, he was appointed as Probationer Station Master in the year 1957. Subsequently, he was promoted as Trainee Assistant Station Master, sometime in the year 1958. The applicant belongs to Caste "Dhoba". Dhoba is a sub-caste of Gond community, which has been notified as Scheduled Tribe in the State of Madhya Pradesh. The applicant, on the basis of a caste certificate, issued to him which indicated that he belongs to Scheduled Tribe community, had obtained all the service benefits, which are given to a Scheduled Tribe candidate. The applicant, while working as Assistant Station Master in the year 1965 applied for the post of Assistant Transportation Inspector in response to a letter issued by the Railways dated 30-03-1965. While making the application for the aforesaid post, he had declared himself as a member of Scheduled Tribe by producing the caste certificate and in fact he got promoted as Assistant Transportation Inspector against the post reserved for the Scheduled Tribe candidate. He also secured further promotion under the same category.

3. While working as Divisional Commercial Manager, South Eastern Railways, in the year 1987, he was asked to produce caste certificate to substantiate that he belongs to Scheduled Tribe

community. Pursuant to the directions issued, the applicant had supplied the caste certificate to the department.

4. The applicant was served with a charge memo dated 21-12-1992 along with a statement of imputation, list of witnesses and list of documents in support of the articles of charges. The sum and substance of the charge memo is that, by producing a false caste certificate that he belongs to Scheduled Tribe community, he had secured first promotion to the post of Assistant Transportation Inspector in the year 1965 and continued to secure promotions against the posts reserved for Scheduled Tribe category. By the above act of omission and commission, he failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Railway Servant in contravention of Rule 3 of the Railway Services (Conduct) Rules, 1966. The charge memo served on the applicant reads as under :-

> "That the said Sri R.K.Bhagoria, while functioning as ASM/S.E.Rly./Silyari in the year 1965 applied for the post of ATI in response to circular letter No.E/55/ATI dated 30.3.65. The application was forwarded by SM/Silyari to the DPO/BSP under No.E1/5908 dt.9.4.65. In this application Shri Bhagoria falsely declared himself as a member of Scheduled Tribe without furnishing any valid certificate and subsequently derived unue promotions against reserved posts, one after another, as ATI/SCR-II/Dy.CHC/CHC/ AOS/ACS/SCO/(Catg.) and equivalent posts though he actually does not belong to any ST.
>
> Thus Sri R.K.Bhagoria, by his above act of omission and commission failed to maintain

> absolute integrity and devotion to duty and acted in a manner unbecoming of a Railway Servant in contravention of Rule 3(1)i, ii and iii of the Railway Services (Conduct) Rules, 1966."

5. The disciplinary authority, by an order dated 19-07-1994, had appointed the Presenting Officer to present the case before the enquiry officer, in respect of the charges alleged in the charge memo. The enquiry officer, after holding a detailed enquiry in accordance with the procedure prescribed under the Rules, had submitted his report dated 20-04-1995 to the disciplinary authority and in that, he had concluded that the delinquent officer is guilty of the charges alleged in the charge memo. After receipt of the report of the enquiry officer, evidence recorded and the documents marked, the disciplinary authority had issued second show cause notice to the petitioner along with the report of the enquiry officer with a direction to make his representation, if any, against the enquiry officer's report. After receipt of the show cause notice, the delinquent officer had filed his reply dated 28-05-1996 and in that, he had brought to the notice of the disciplinary authority regarding perversity in the findings of the enquiry officer's report. After considering the reply filed by the delinquent officer, the disciplinary authority, on 19-03-1999 passed an order imposing a penalty of reduction of monthly pension to the minimum permissible on a permanent basis and had further ordered forfeiture of entire amount of gratuity. The relevant portion of the order passed by the disciplinary authority is as under :-

> "After giving careful consideration to the report and proceedings of inquiry, representation of Shri Bhagoria and all other relevant records/aspects of

> the case, in consultation with Union Public Service Commission, the President has come to the conclusion that the charges is proved against Shri Bhagoria for the reasons given in Union Public Service Commission's letter No.F.3/96/98-SI dated 9.2.99. Accepting the advice of UPSC and holding that the charge proved is indicative of commission of grave misconduct, President has decided to impose a penalty of reduction of monthly pension to the minimum admissible i.e. Rs.1275.00 (pre revised Rs.375.00) on a permanent basis and further forfeiture of entire amount of gratuity admissible to him, on Shri RK Bhagoria. The pension of Shri Bhagoria is accordingly reduced to the minimum admissible i.e. Rs.1275.00 on a permanent basis and further entire amount of gratuity is forfeited. "

6. The applicant being aggrieved by the order passed by the disciplinary authority had filed an application, O.A.No.385 of 2003 before the Tribunal. The primary contention that was raised in the application was that, the Railway authorities without cancelling the caste certificate issued by the competent authority, could not have come to a conclusion that the applicant does not belong to Scheduled Tribe community. Secondly, it was contended that there was enormous delay in initiating the disciplinary proceedings for the so called act of production of false certificate to secure promotion.

7. In reply to the contentions of the applicant, the respondents, i.e., the petitioners herein, have stated that the applicant by producing a false certificate had secured promotion to the post of Assistant Transportation Inspector which post was reserved for Scheduled Tribe

category; secondly, that it is only in the year 1987, the department came to know that the caste certificate produced by the applicant is a false certificate and immediately thereafter had initiated the disciplinary proceedings against the applicant and, therefore, there is no delay in initiating the disciplinary proceedings against the applicant. It was their further contention that the enquiry officer, after holding a detailed enquiry as prescribed under the Rules, has come to the conclusion that the allegations made in the charge memo are proved against the applicant. They had further stated that the disciplinary authority, after careful consideration of the report of the enquiry officer, evidence recorded and the supporting documentary evidence, has accepted the report of the enquiry officer and has imposed a major penalty as provided under the Rules and, therefore, the applicant is not entitled to any relief whatsoever.

8. The Tribunal, after considering the contentions canvassed by the parties to the *lis*, has come to the conclusion that there is inordinate delay in initiating disciplinary proceedings and, therefore, the proceedings are vitiated. Secondly, the Tribunal is of the view that the authorities without cancelling the caste certificate issued to the applicant could not have come to a conclusion that the applicant does not belong to Scheduled Tribe community. Having come to the aforesaid conclusion, the Tribunal has allowed the applicant's application and has set aside the order passed by the disciplinary authority of the Railways dated 19-03-1999. In support of its findings and conclusions, the Tribunal has relied on the observations made by the Bombay High Court in the case of **Anil Vasantrao Shirpurkar vs. State of Maharashtra and others, (2003 (1) ATJ 653)**. It is the

correctness or otherwise of the said order is the subject matter of this writ petition.

9. Shri P.S.Koshy, learned counsel appearing for the petitioners – Union of India, would submit that the respondent herein had submitted a caste certificate in the year 1987 pursuant to the direction issued by the Railway authorities and it was discovered that the caste certificate produced by the respondent is a false caste certificate and, thereafter, the Railway authorities had initiated departmental enquiry proceedings within a reasonable time, and therefore, the Tribunal was not justified in holding that there is delay in initiating departmental proceedings and, therefore, the same is vitiated. Learned counsel would further contend, that, the enquiry officer, after detailed consideration of the certificate produced by the respondent, has concluded that the certificate so produced is not genuine and, therefore, the respondent was not entitled to get benefit under the Scheduled Tribe category. It is further submitted that since the certificate so produced was false certificate, question of cancelling the certificate by a competent authority would not arise.

10. Shri Manindra Shrivastava, learned Senior Counsel appearing for the respondent ably justifies the findings and conclusions reached by the Tribunal.

11. The question, that would arise for consideration and decision of this Court after hearing learned counsel for the parties, is as under :-

> "Whether the Tribunal was justified in setting aside the order passed by the disciplinary authority dated 19-03-1999 on the ground that there was

inordinate delay in initiating departmental proceedings?"

12. In the charge memo that was issued to the respondent it was stated that in the year 1965 he had applied for the post of Assistant Transportation Inspector in response to a letter dated 13-03-1965 and in that he had declared himself as a member of Scheduled Tribe without furnishing any valid caste certificate and subsequently derived accelerated promotions against the posts reserved for Scheduled Tribe category, one after another. So the main thrust of the charge memo is that by producing false certificate in the year 1965, the respondent had secured promotions in the Railway administration. For the first time, the disciplinary authority, by issuing the aforesaid charge memo dated 21-12-1992, had initiated departmental enquiry proceedings against the respondent for the alleged act of production of a false certificate in the year 1965 and thereby he had committed certain acts of omission & commission, and had failed to maintain absolute integrity & devotion to duty and had acted in a manner unbecoming of a Railway servant.

13. The enquiry proceedings that was initiated against the respondent by the petitioners was in the year 1992. There is delay of nearly 2½ decades for initiating domestic enquiry proceedings for the alleged act of production of a false certificate. Time and again the Apex Court has observed, that delay in initiating proceedings after long lapse of time, without a reasonable cause, would vitiate the enquiry proceedings. The Supreme Court, in the case of **State of M.P. vs. Bani Singh and another, [1990 (Supp) SCC 738]**, at paragraph 4 of the order, has stated as under :-

> "4. The appeal against the order dated December 16, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

14. In the case of **B.C.Chaturvedi vs. Union of India and others, [(1995) 6 SCC 749]** the Supreme Court has observed, that, delay in initiating the disciplinary proceedings is an unfair procedure depriving the livelihood of a public servant offending Articles 14 and 21 of the Constitution of India. Exception would depend upon facts and circumstances of each case.

15. In the case of **P.V.Mahadevan vs. M.D., T.N.Housing Board, [(2005) 6 SCC 636]**, the Supreme Court has observed that delay in initiating departmental enquiry proceedings, in respect of an event which had taken place 10 years earlier would vitiate the enquiry proceedings, if the delay is not properly explained. While saying so, the Court has once again relied upon the law enunciated by the Apex Court in the case of State of M.P. vs. Bani Singh and another and also in the case of **State of A.P. vs. N. Radhakishan, [(1998) 4 SCC 154]**.

16. The Supreme Court, in the case of **M.V.Bijlani vs. Union of India and others, [(2006) 5 SCC 88]**, has observed at paragraph 16 as under :-

> "**16**. So far as the second charge is concerned, it has not been shown as to what were the duties of the appellant in terms of the prescribed rules or otherwise. Furthermore, it has not been shown either by the disciplinary authority or the Appellate Authority as to how and in what manner the maintenance of ACE-8 Register by way of sheets which were found attached to the estimate file were not appropriate so as to arrive at the culpability or otherwise of the appellant. The Appellate Authority in its order stated that the appellant was not required to prepare ACE-8 Register twice. The appellant might have prepared another set of register presumably keeping in view the fact that he was asked to account for the same on the basis of the materials placed on records. The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and they continued for a period of seven

> years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer."

17. Keeping in view the dicta of the Apex Court, let us go back to the fact situation in the present case. Admittedly, the allegation against the respondent is that by producing a false caste certificate in the year 1965, he had secured a promotion to the post of Assistant Transportation Inspector which post was reserved for Scheduled Tribe category. For the first time, the Railway authorities would call upon the respondent to produce his caste certificate in the year 1987 and thereafter it is only in the year 1992 the disciplinary authority of the Board would issue a charge memo inter alia alleging that the respondent has committed certain acts of omission and commission and acted in a manner unbecoming of a Railway Servant. Firstly, there is a delay of nearly 2½ decades in asking the respondent to produce the certificate and thereafter there is 5 years delay in initiating departmental proceedings for the alleged acts of production of a false certificate while securing promotion from the post he was holding to the next promotional post. This unexplained delay on the part of the petitioners, in our opinion, is fatal to the proceedings and, therefore, the same is vitiated. The Tribunal, keeping the aforesaid aspects of the matter in view, has rightly set aside the order passed by the disciplinary authority on the ground that there is enormous delay in initiating the disciplinary enquiry proceedings and, therefore, the proceedings are vitiated.

18. Admittedly, the respondent, at the time of joining the service of the Railways, had produced a caste certificate to the effect that he belongs to Scheduled Tribe community. The said certificate is still intact, in the sense a competent authority has not cancelled the certificate. Without cancellation of the said certificate, the petitioners could not have come to a conclusion that the caste certificate produced by the respondent is a false certificate and thereby he has committed an act which is unbecoming of an officer of the Railways. Even on this count also, the findings and conclusions reached by the Tribunal require to be accepted.

19. In view of the aforesaid discussion of ours, we are of the opinion that the petitioners in this writ petition have not made out a case for interference with the orders passed by the Tribunal. Therefore, the writ petition requires to be rejected and it is accordingly rejected. In the facts and circumstances of the case, the parties are directed to bear their respective costs. Ordered accordingly.

**Sd/-**
**Chief Justice**

**Sd/-**
**V.K. Shrivastava**
**Judge**